



THE SECRETARY OF THE INTERIOR  
WASHINGTON

August 15, 1996

Memorandum for the President

INTRODUCTION AND SUMMARY

In response to your request, attached as Exhibit A is a draft proclamation, with an accompanying map,<sup>1</sup> to establish the Grand Staircase-Escalante National Monument in southern Utah. This memorandum describes (a) the basis for my recommendation that you establish the Grand Staircase-Escalante National Monument, (b) the proclamation, and (c) the resources, ownership patterns and management issues present in the area. After careful review of the record, I am convinced that the objects satisfy the criteria for establishment of a national monument pursuant to the Antiquities Act, and that the boundaries of the land reserved represent the smallest area compatible with the proper care and management of those objects.

THE ANTIQUITIES ACT

Section 2 of the Antiquities Act, 16 U.S.C. § 431, authorizes the President to establish as national monuments "objects of historic or scientific interest that are situated upon the lands owned or controlled by the government of the United States." It further authorizes the President to reserve, as part of the monument, land that is "the smallest area compatible with the proper care and management of the objects to be protected."

A. Objects of Historic or Scientific Interest

The proposed Grand Staircase-Escalante National Monument is located on the Colorado Plateau in south-central Utah, within the drainage of the Colorado River. Elevation ranges from 4,100 to 8,200 feet

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<sup>1</sup> The boundaries of the proposed monument are drawn on the map entitled "Grand Staircase-Escalante National Monument," which would be attached to, and made a part of, your proclamation. A reduced version of this map suitable for publication would be promptly prepared should you decide to proceed. Because of the acreages involved, it is not practicable, as of this date, to describe the boundaries of the land reserved as a part of the monument either by metes and bounds or by reference to designated subdivisions on official surveys shown on publicly recorded plats or maps. The BLM will produce a description conforming to the BLM Specifications for Descriptions of Tracts of Land for Use in Land Orders and Proclamations as soon as practicable should you decide to proceed.

above sea level. The map appended to the proclamation attached as Exhibit A sets out the boundaries of the land reserved for the monument. The area covers about 1.7 million acres. The proclamation attached to this memo as Exhibit A vividly describes objects in the area that warrant protection as a monument, and Exhibit B lists historic and scientific objects in this area. Attached as Exhibit C is a bibliography of the principal sources of information relied upon in making this recommendation.

The area recommended to be included in the monument has remained isolated and relatively undisturbed and for the most part unroaded. Most of the land within the outer boundaries of the proposed monument is federally owned. The nonfederal land is owned mostly by the State of Utah in scattered 640 acre sections, the result of Utah's statehood land grant. Currently, the federal lands in the area are used primarily for scientific study, primitive recreation, and livestock grazing.

In the last few decades the area in question has been evaluated for the possibility of providing greater recognition of and legal protection for its resources. In the late 1970s, the area was evaluated for its "wilderness characteristics" under FLPMA, and several wilderness study areas, totaling about 900,000 acres, were established in the area covered by the proclamation. The documentation of these areas assembled in the wilderness inventory and study process has identified many of the objects of scientific and historic interest within the monument area.

Nearby federal lands have been recognized by Congress to contain scientific and historic features worthy of protection. For example, in 1972 Congress created the Glen Canyon National Recreation Area (GCNRA) in order to, among other things, "preserve [its] . . . scientific, and historic features contributing to public enjoyment of the area." 16 U.S.C. § 460dd. The GCNRA forms the eastern and part of the southern boundary of the area covered in the attached proclamation. Similarly, Congress established Canyonlands National Park to the northeast in 1964 in recognition of, among other things, its "scientific" and "archaeologic" features, 16 U.S.C. § 271.

More than one hundred national monuments have been established by Presidents over the past ninety years. Attached as Exhibit D is a complete list. Exhibit E lists the monuments by President. Exhibit F is a list of the monuments found wholly or partially on the Colorado Plateau, in the general vicinity of this monument. Most of the proclamations establishing these monuments cited geologic, paleontologic, archaeologic and other features similar to those in the attached proclamation. Many of them included substantial land areas, and/or were enlarged by subsequent proclamations or acts of Congress. A number of them ultimately were designated as National Parks by Congress.

For example, what is now Zion National Park to the west of the monument was originally established by President Taft as Mukuntuweap National Monument in 1909 in order to protect its "many natural features of unusual archaeologic, geologic, and geographic interest" (Proclamation No. 877, 36 Stat. 2498). President Wilson enlarged it in 1918 (Proclamation No. 1435, 40 Stat. 1760), and Congress made it into a national park in 1919 (16 U.S.C. § 344, 41 Stat. 356). President Franklin Roosevelt established Zion National Monument in an adjacent area in 1937 (Proclamation No. 2221, 50 Stat. 1809), and Congress merged it into Zion National Park in 1956 (70 Stat. 527).

President Hoover established Arches National Monument to the northeast in 1929, citing its "unique wind-worn sandstone formations, the preservation of which is desirable because of their educational and scenic value" (Proclamation No. 1875, 46 Stat. 2988). Arches was later expanded by Presidents Franklin Roosevelt and Johnson (Proclamation Nos. 2312 and 3887), and Congress made it a National Park in 1971 (16 U.S.C. § 272, 85 Stat. 422). President Roosevelt established Capitol Reef National Monument to the immediate east in 1938 to protect its "narrow canyons displaying evidence of ancient sand dune deposits of unusual scientific value, and . . . various other objects of geological and scientific interest" (Proclamation No. 2246, 50 Stat. 1856). Presidents Eisenhower and Johnson expanded it (Proclamation Nos. 3249 and 3888), and Congress made it a National Park in 1971 (85 Stat. 739). President Harding set aside Bryce Canyon National Monument to the immediate north and northwest in 1923, citing its "unusual scenic beauty, scientific interest and importance" (Proclamation No. 1664, 43 Stat. 1914), and President Hoover expanded it twice, Proclamation Nos. 1930, 1952, 46 Stat. 3042, 47 Stat. 2455. Congress made it Utah National Park in 1924 (43 Stat. 593) and four years later changed its name to Bryce Canyon National Park (45 Stat. 147).

Farther west on the Colorado Plateau, Cedar Breaks National Monument was established by Franklin Roosevelt in 1933 to protect its "spectacular cliffs, canyons, and features of scenic, scientific, and educational interest" (Proclamation No. 2054, 48 Stat. 1705), and its boundary was subsequently revised by Congress in 1942 (56 Stat. 141) and 1961 (75 Stat. 198). President Theodore Roosevelt established Natural Bridges National Monument in 1908 to preserve "extraordinary examples of stream erosion" and "prehistoric ruins" (Proclamation No. 804, 35 Stat. 2183), and Presidents Taft, Wilson and Kennedy enlarged it (Proclamation Nos. 881, 1323, 3486). Rainbow Bridge National Monument was established by President Taft in 1910, who described it as "of great scientific interest as an example of eccentric stream erosion" (Proclamation No. 1043, 36 Stat. 2703).

The courts (including the U.S. Supreme Court) have occasionally been asked to review exercises of Presidential authority under the

Antiquities Act. They have uniformly upheld establishment of national monuments, e.g.:

Grand Canyon National Monument, on the basis of its unique geology, scientific interest and general public appeal, Cameron v. United States, 252 U.S. 450 (1920);

Devil's Hole National Monument, on the basis of its unique resident pupfish species and the hydrology of the water pool, Cappaert v. United States, 426 U.S. 128 (1976);

Jackson Hole National Monument, on the basis of the interrelationship of living systems, the geologic features and the history of the area, State of Wyoming v. Franke, 58 F. Supp. 890 (D. Wyo. 1945); and

Channel Islands National Monument, expanded on the basis of its varied marine life, fossils, and geology, United States v. California, 436 U.S. 32, 36 (1978).

B. Land Area Reserved for the Proper Care and Management of the Objects to be Preserved

The Antiquities Act authorizes the President, as part of his declaration of a national monument, to reserve land, "the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected." 16 U.S.C. § 431 (emphasis added). The area proposed for reservation has been carefully delineated, based on review of available information, to meet the goals of effectively caring for and managing the objects in perpetuity.

The area includes the archaeologic, biologic, paleontologic, geologic, and historic objects identified in the Proclamation and Exhibits B and C accompanying this letter. Some of these objects are present throughout the entire monument area; others are scattered within it, and several lie along the borders of the area. Many objects also overlap. Thus, the entire area is necessary for protection of the objects. Even if it were possible to reserve a smaller area by isolating certain objects, such a fragmentation of the proposed monument would endanger many of the objects, undermine the purposes of the monument itself, and create substantial impediments to effective management of the monument.

The area of the proposed monument is based on the conservation needs of the objects to be protected. Some of the objects identified are present throughout the area, and others cover immense, interconnected areas of land or depend for their scientific value on their location at various sites or elevations. Some of the scientific and historic value of certain objects comes from their scarcity and fragility or the fact that they have remained relatively undisturbed and unchanged. Preservation of

such objects (the biologic and archaeologic resources are examples) requires, among other things, protection of land surrounding them in order to maintain the relatively remote conditions that have made their continued existence possible.

Furthermore, the scientific value of many of the objects within the monument requires preservation of areas large enough to maintain the objects and their interactions. For example, species that exist because of the area's extraordinary geologic and environmental stability are distributed according to the geologic features to which they have adapted. Much of the biologic and other scientific interest in the area results from the variety of geologic substrates across elevational gradients. Many species must range within and through the area and neighboring protected areas to maintain viable populations and their role in the ecosystem. Thus, protection of the aggregate area is necessary for proper care of the objects. In addition, a number of the objects are distributed through multiple parts of the area; significant fossils, for example, are distributed throughout the Dakota, Tropic Shale, Straight Cliffs, Wahweap and Iron Springs Formations. Management of a patchwork of reserved lands would be impractical, as it would make it more difficult to care for the objects, reduce options for natural resource management and lead to inconsistent resource management standards for overlapping resources. In short, our analysis indicates that reservation of a smaller area would undermine proper care and management of the monument.

There is ample precedent for declaring analogous geologic, biologic and historic objects to be protected under the Antiquities Act, and reserving correspondingly large areas of land as part of their monument designations. President Theodore Roosevelt was the first President to exercise such presidential discretion in his reservation of over 800,000 acres as the Grand Canyon National Monument. More recent examples include the Wrangell-St. Elias National Monument, which encompassed 10,950,000 acres to protect an assemblage of mountain peaks, including Mount St. Elias and the Mount Wrangell volcano, and the flora and fauna of the Bremner and Chitina River Valleys. The Yukon Flats National Monument, consisting of approximately 10,600,000 acres, encompassed the largest and most complete example of an interior Alaskan solar basin with its associated ecosystem. In closer proximity, 1.6 million acres were initially reserved for the Death Valley National Monument, which Presidents subsequently expanded and Congress expanded again and protected as Death Valley National Park. At 1.7 million acres, the area that I recommend for reservation is comparable in size to some of the earlier Monuments that protected natural resources for scientific and historic purposes.

Many relatively large Monuments were later expanded because they were found to be too small for the care and management of their objects or associated objects. The history of Zion National Monument and Park, described above, provides one example. The area



of land that I recommend you reserve is based on our current understanding of the extent of, and interrelationships between, the objects to be protected.

Finally, although some of the objects to be protected in the proposed monument also exist in surrounding areas, I recommend that you reserve only the identified acreage for the monument. Many of these other areas are already protected under the jurisdiction of various federal or state agencies, with whom the Bureau of Land Management (the BLM) will work to assist in the conservation of shared resources. For example, objects in the eastern and southern end of the Escalante region not included in the proposed monument are subject to protective management in Glen Canyon Recreation Area and Capitol Reef National Park. While additional areas of the Grand Staircase also could have been included in the monument, by limiting the monument and its reserved land to that proposed, a portion of each aspect of the Grand Staircase will be federally protected in some manner, whether within this monument or within Zion or Bryce Canyon National Parks. Finally, the boundaries have been drawn to exclude many non-federal lands, and, for effective management, often lie along the border of BLM lands. In sum, based on available information, I recommend that you reserve only the area delineated on the map accompanying Exhibit A.

#### LEGAL EFFECTS OF THE PROCLAMATION

I direct your attention to several significant aspects of the proclamation attached as Exhibit A. First, it would reserve only the federal lands in the area, because the Antiquities Act applies only to "objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States." 16 U.S.C. § 431.

Second, the proclamation would be subject to valid existing rights. Thus, to the extent a person or entity already owns a valid property right in the federal lands or resources within the area, the exercise of such rights may be regulated in order to protect the purposes of the monument, but the regulation must respect such rights.

Third, the proclamation withdraws the federal lands in the area from "entry, location, selection, sale, leasing, or other disposition under the public land laws, other than by exchange that furthers the protective purposes of the monument." This withdrawal prevents the location of new mining claims in the area under the Mining Law, and prevents the Secretary of the Interior from exercising discretion under the mineral leasing acts and related laws to lease or sell federal minerals in the area.

Fourth; the proclamation would not reserve the water resources of the area under federal law pursuant to the so-called Winters

doctrine. Some of the objects to be protected under the proclamation (e.g., paleontology, archeology) do not require water. The proclamation would direct the Secretary to address, in the management plan described in the next paragraph, the extent to which water is necessary for the proper care and management of the objects of the monument, and the extent to which further action may be necessary pursuant to federal or state law to assure the availability of water.

Fifth, the proclamation would direct the Secretary to prepare a management plan for the area within three years. The plan, which would be prepared using the resource planning processes of FLPMA, would provide specific, on-the-ground guidance for protecting the objects within the monument, while permitting other uses to proceed where consistent with the purposes of the monument. While it is not possible, in advance of completion of the management plan, to set forth all the details of how existing or proposed future activities in the area would be affected in order to protect the purposes of the monument, the effects are described in general terms further below.

#### ADMINISTRATION OF THE MONUMENT

##### A. Management by the Bureau of Land Management

The federal lands in the area described in the attached proclamation are currently under the jurisdiction of the Bureau of Land Management (BLM) in the Department of the Interior. BLM manages the land pursuant to its basic organic authorities, the primary one being the Federal Land Policy and Management Act of 1976 (FLPMA).

I believe the area is best left under BLM management, and the attached proclamation would have the Secretary of the Interior manage the monument through the BLM. The result would be that management of the federal land would continue under the BLM's existing authorities, but subject to the overriding purpose of protecting the objects described in the proclamation. The establishment of the monument thus constitutes an overlay on the management regime otherwise applicable to lands managed by the BLM. It limits the management discretion that the BLM would otherwise have, by mandating protection of the historic and scientific objects within the national monument.

Congress has had before it over the past several years various bills that would designate parts of the area within the monument as wilderness. As noted earlier, about 900,000 acres in the monument have been classified as wilderness study areas pursuant to FLPMA, and managed by law to preserve their suitability for preservation as wilderness pursuant to the Wilderness Act of 1964, 16 U.S.C. §§ 1131-35, until Congress directs otherwise. See 43 U.S.C. § 1782.

The Wilderness Act of 1964 serves some values (e.g., outstanding opportunities for solitude and primitive and unconfined recreation) that are not addressed in the Antiquities Act of 1906 which, as noted earlier, serves to protect "objects of historic or scientific interest." Section 2(c) of the Wilderness Act does expressly acknowledge that a wilderness area "may . . . contain ecological, geological, or other features of scientific, educational . . . or historic value," and section 4(b) directs that wilderness areas "shall be devoted to the public purposes" of, among others, "scientific, educational, conservation, and historical use."

The extent of any overlap between wilderness management and protecting the objects within this monument would be addressed in the process of preparing a management plan for this monument. Nothing in the proclamation establishing this monument would prevent the Executive from recommending, or Congress from designating, areas within the monument as wilderness. Congress has, in fact, many times in the past designated wilderness within existing national monuments, including the following monuments: Badlands, Bandelier, Black Canyon of the Gunnison, Chiricahua, Craters of the Moon, Joshua Tree, Lava Beds, Misty Fjords, Organ Pipe Cactus, Pinnacles, and Saguaro.

B. Impact of monument designation on existing or planned activities in the area

1. Currently permitted livestock grazing (including existing pipelines, water impoundments and similar range improvements), hunting, fishing, off-road vehicle use, and similar activities

These activities would generally not be affected at current levels or in current areas of use. The only exceptions are (1) where the management plan to be prepared identifies specific places where such uses ought to be restricted or prohibited as necessary to protect the objects protected by the monument proclamation; or (2) where, in advance of completion of the management plan, the BLM land manager finds a clear threat from such a use to an object protected by the designation and the circumstances demand swift protective action. Except in emergency situations, any restrictions on the current levels or areas of use of such activities will be adopted only after a public process and only where necessary to protect the purposes of the monument.

Such uses would, of course, remain subject to existing laws and regulations other than the Antiquities Act, and therefore remain subject to regulation under such provisions for reasons other than establishment of the monument.

2. Use of existing rights-of-way (such as those established under R.S. 2477 or Title V of FLPMA)



As noted earlier, the area covered by the proclamation has very few roads. Use of existing rights-of-way would generally be subject to the same standards as described in the preceding section addressing currently permitted uses. In some cases existing rights-of-way may include valid existing rights. The exercise of such rights may be regulated in order to protect the purposes of the monument, but any regulation must respect such rights.

### 3. Activities on state or private land

The area within the boundaries of the proclamation contains approximately 180,000 acres of state land (mostly checkerboarded, four sections to each township, pursuant to the terms of the Utah statehood act). It also contains approximately 15,000 acres of private land. The monument designation would not apply to those lands. The legal principles applicable to the use of these lands prior to establishment of the monument would continue to apply.

### 4. Mining claims

New mining claims would be prohibited as the proclamation withdraws the area from the Mining Law. Existing mining claims that contain a valid discovery of a valuable mineral deposit as of the date of the designation would contain valid existing rights. The exercise of such rights may be regulated in order to protect the purposes of the monument, but any regulation must respect such rights. Activities on existing mining claims that lack a discovery may be regulated to protect the purposes of the monument.

### 5. Coal Mining Proposals

The proposed monument contains coal resources, particularly in the Kaiparowits coal field. Limited mining for local use dates back decades, but has cumulatively totaled only a few thousand tons. Test mining of a few thousand additional tons took place in the 1970s, but there has never been a major mine, nor any other major development, in the area proposed for the monument. There have, however, been a number of proposals over the years to open coal mines and build power plants in the region.

In the mid-1960s the Department issued numerous coal leases to private entities in the Kaiparowits coal field. A number of these leases have expired or will expire in the near future. The principal remaining lessees are Pacificorp (successor to Utah Power & Light Co.) (about 18,000 acres) and Andalex Resources, Inc. (about 34,000 acres).

In the 1970s several mines and a large mine-mouth power plant were proposed in the area, but after extensive study and considerable public controversy, the proposals were withdrawn. The environmental impact statements prepared for the 1970s mines and power plant proposal were the first detailed cataloging of much of

the scientific and historic resources of the area in the proposed monument.

Andalex Resources is the only major holder of federal coal leases in this area that has put forward a concrete proposal to develop its leases. The Department, along with the State of Utah, is in the process of preparing a draft environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), on Andalex's proposal to open a mine in the Smoky Hollow area on the south side of the Kaiparowits Plateau. The mine would involve about 25,000 acres of land in the area covered by the proclamation, as well as require construction of a transmission line and a microwave communication system, and improvement of an existing road or construction of a new road to the mine site.

Andalex's current plan is for the coal to be trucked off the mine site via an existing dirt road (to be paved) south through the GCNRA, or through construction of a new road west and south of the mine site through BLM land. Either route would connect to the existing paved highway at Big Water, Utah, south of the area. From there the coal would continue by truck to a rail line near Cedar City, Utah, or Moapa, Nevada, and from there by rail to customers in the southwest and to the Port of Long Beach to be transported by ship to consumers in the Far East. The proposed mine would operate for more than a half century. Haul trucks would operate 24 hours a day, 365 days a year, with loaded trucks dispatched from the mine at 8 to 10 minute intervals.

The company has applied for a number of permits, rights-of-way, and other authorizations required by federal and state law. The draft EIS on the proposal is expected to be published for public comment in the next few months. Following publication of the draft and a public comment period, a final EIS must be prepared before a final decision on the proposal can be made. The company must receive a favorable decision before any mining can begin.

Establishment of the national monument introduces an important new consideration into the decisionmaking process regarding the proposed mine. Significant questions remaining include (a) whether the proposed project is inconsistent with the purposes of the monument; and (b) whether and to what extent the company has valid existing rights that would have to be addressed. On this second point, the federal coal leases held by Andalex do not convey absolute rights to develop coal. Among other things, the leases are subject to other applicable legal requirements, and do not convey rights of way across federal land located off the leasehold. These rights of way remain subject to an independent federal permit requirement.

One of the other major holders of federal coal leases in the area, Pacificorp, has indicated its interest in relinquishing its leases. My staff has been actively discussing with the company ways to

accomplish this, including an exchange for bidding rights on other federal mineral leases. Andalex has in the past rebuffed Departmental inquiries regarding possible relinquishment of their leases, but I would seek to explore this possibility again if you establish this monument. In order to allow time to assess the company's willingness to pursue alternatives to the proposed project, I would, unless you direct otherwise, suspend the EIS preparation process upon creation of the monument to allow Andalex to assess the situation. Should Andalex not wish to move toward relinquishing the Kaiparowits leases, I would restart the EIS process and move it to completion and an ultimate decision on whether the proposed mine, including associated rights-of-way, can go forward consistent with existing law, including the monument proclamation.

#### CONCLUSION

Establishing the Grand Staircase-Escalante National Monument would be an exemplary exercise of Presidential authority under the Antiquities Act, well in keeping with past practice through which many notable objects of historic and scientific interest have been preserved, to the Nation's great and lasting benefit. I strongly recommend you sign the proclamation.

A handwritten signature in dark ink, appearing to read "Bruce B. Babbitt". The signature is fluid and cursive, with the first name "Bruce" and last name "Babbitt" clearly distinguishable.

The Secretary of the Interior